

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**LOYAL ORDER OF MOOSE LODGE #2517
DOCKET NO. 29-20010152**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Wednesday, October 17, 2001 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

The Petitioner was represented by Robert Dunn, Administrator. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

The Petitioner's CG-1 and CG-2 (Indiana Charity Gaming Qualification Application and Indiana Department of Revenue Annual Bingo Application) were received by the Department on February 6, 2001. The Department denied Petitioner's Indiana Charity Gaming License Application in a letter dated June 25, 2001. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

SUMMARY OF FACTS

- 1) Petitioner applied for an annual charity gaming license on August 7, 2000.
- 2) The Petitioner's application was denied in a letter dated November 29, 2000.
- 3) In the Department's letter dated November 29, 2000, the Petitioner was notified that Mr. Jerry Russo was prohibited from associating with charity gaming for a period of two (2) years pursuant to IC 4-32-13-3.
- 4) The Petitioner reapplied for an annual charity gaming license on February 6, 2001.
- 5) On April 16, 2001 the Department's investigator conducted an investigation to determine if the previous reasons for Petitioner's denial had been rectified.

- 6) As a result of the Department's investigation, the Petitioner's application for an annual charity gaming license was denied in a letter dated June 25, 2001.
- 7) In the Department's letter dated June 25, 2001 the Petitioner was informed that the Department's investigation revealed that Mr. Jerry Russo was present at the lodge when the second application was completed, and that he gave instructions on how to complete the application.
- 8) The Department also stated that its investigation revealed that the Petitioner does not own the building in which its gaming was to be conducted contrary to its response to question #6 on its CG-2.
- 9) The Department's investigator also found that some individuals listed as operators and workers are no longer members of Petitioner's organization, or are too ill to volunteer.
- 10) The Department also alleged that one individual listed as a bingo worker was actually a bartender, and not a member of Petitioner's organization.
- 11) The Petitioner protested the Department's denial in a letter dated June 29, 2001.

FINDINGS OF FACTS

- 1) The Department's investigator stated at hearing that the members she interviewed confirmed that Mr. Russo was present when the Petitioner was filling out its application for charity gaming, and that Mr. Russo helped in completing the application. (Record at 12).
- 2) The Petitioner, through its witness, testified that Mr. Russo was present while they were filling out the application, but refused to help in any way citing the fact that he was barred from associating with any charity gaming. (Record at 20).
- 3) Several workers and operators questioned by the Department's investigator stated that they were not members of the organization. (Record at 14-15).
- 4) The Petitioner's bartender who sold pull tabs was not a member of Petitioner's organization. (Record at 22).
- 5) An individual who is selling pull tabs must be an operator of the organization. (Record at 25).
- 6) The Petitioner's representative stated that several of their operators and workers were indeed unable to volunteer because of health, but that their health had deteriorated after the application had been filed with the Department. (Record at 26).
- 7) The Petitioner was in fact leasing the property in question. (Record at 21).
- 8) Petitioner also verified that Mr. Russo and several of its members have left the organization over disputes arising from gaming activities. (Record at 24).
- 9) Petitioner's witness also admitted that the information contained in the application in question was not accurate. (Record at 26).

STATEMENT OF LAW

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event."
- 3) IC 4-32-9-29 states, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."
- 4) "Operator" means an individual who is responsible for conducting an allowable event for a qualified organization under this article in accordance with the Indiana law. See IC 4-32-6-17.

CONCLUSIONS OF LAW

- 1) The Petitioner at hearing failed to meet its burden of proof.
- 2) The lack of detailed information supporting the Petitioner's appeal was sufficient to support the denial the Petitioner's application.
- 3) It is clear that the Petitioner was lax in its attention to detail. These oversights may seem trivial to the Petitioner, but the information gathered on the CG-1 and CG-2 is vital in qualifying an organization to conduct gaming.
- 4) However, the missing information can be provided and the application resubmitted again in its completed form.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge recommends the following:

Petitioner's appeal is denied.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.

- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

THIS DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.

Dated: _____
Bruce R. Kolb / Administrative Law Judge